

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh and Remy

From: Lawrence T. Woodlock, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Prenotice Regulation 18421.5, When An Independent Expenditure is Made

Date: September 25, 2007

Proposed Commission Action and Staff Recommendation: Approve publication of notice for adoption of Regulation 18421.5 at the December meeting.

Reason for Proposal: The Political Reform Act requires disclosure on campaign reports of campaign-related “expenditures” as well as “independent expenditures.” When a committee makes a payment for a political purpose it is an “expenditure” (Gov. Code Sec. 82025) reportable as such on the committee’s campaign reports. A committee is also required to report any “independent expenditures,” but a payment does not qualify as an “independent expenditure” until it results in the actual dissemination of a communication featuring express advocacy not coordinated with the affected candidate or ballot measure committee. (Gov. Code Sec. 82031.) As a result, a committee makes a reportable “expenditure” when it makes payments related to, but in advance of, the dissemination of a communication that is an “independent expenditure.” It must report an “independent expenditure” when it actually disseminates the communication.

The proposed regulation codifies longstanding advice specifying when an independent expenditure is “made” under the Act. It clarifies the point at which the independent expenditure has been made, and emphasizes that this is a separate type of reportable “expenditure.”